IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.10953 of 2006
DATE OF DECISION: 29-01-2007

Sh.Om Parkash, Member, Haryana Public Service Commission, Sector 17, Chandigarh.

.....Petitioner

VERSUS

1.The Financial Commissioner and Principal Secretary to Government of Haryana, Administration of Justice Department, Chandigarh.

2.The Director, Prosecution, Haryana, Panchkula.

.....Respondents

CORAM:- HON'BLE MR.JUSTICE ASHUTOSH MOHUNTA
HON'BLE MR.JUSTICE R S MADAN

PRESENT: Mr.Bhoop Singh, Advocate
for the petitioner.

Dr.Anmol Rattan Sidhu, Additional Advocate General, Haryana with
Mr.Deepak Jindal, Assistant Advocate General, Haryana.

R S MADAN, J.

The claim of the petitioner is that on 14-1-1991, he joined as Deputy District Attorney with the Department of Director, Prosecution Haryana and later on he was promoted as District Attorney in the Prosecution Department, Haryana. It was on 6-8-2004, he resigned from the post of District Attorney, Prosecution Department, Haryana after depositing

one month's salary and his resignation was accepted on 9-8-2004. On 10-8-2004, he was appointed as Member of the Haryana Public Service Commission vide Haryana Government Notification dated 10-8-2004 (Annexure P1). It was on 23-8-2004, the petitioner wrote a letter to respondent No.1stating therein that his resignation be treated as deemed retirement in view of the provisions of Rule 5 of the Haryana Public Service Commission (Conditions of Service) Regulations, 1973 and Rule 4.19(b) of Civil Services Rules,Vol-II and emoluments deposited may be refunded to him.

On 1-6-2005, the petitioner again sent a letter to respondent No.1 requesting to refund the emoluments deposited by him in lieu of one month's notice. The petitioner further stated that he had served the Department for 13 years 6 months and 25 days as such he is entitled to pension, gratuity and other retiral benefits as per provisions of Rule 6.16(2) of the Punjab Civil Services Rules, Volume-II as applicable to the State of Haryana. Vide letter dated 7-7-2005, the petitioner's request was declined. This led to the filing of the present petition by the petitioner.

Upon notice, the respondents resisted the claim by filing a joint written statement on behalf of respondents No.1 and 2.

The claim of the petitioner was, however, rejected by respondents vide Annexure P8, which is reproduced as under:

"*From*

The Financial Commissioner & Principal Secretary to Government, Haryana, Administration of Justice Department,

To

The Director, Prosecution, Haryana,
Panchkula.

Memo No.27/21/2004-2JJ1.
Dated, the Chandigarh: 28-4-2006

Sub: Regarding resignation from service by Sh.Om Parkash, Ex.District Attorney.

With reference to your Memo No.E/4/134-A.P.(1)-06/2880 dated 22-2-2006 on the subject cited above.

It is regretted that the Government is unable to accede to your proposal.

Sd/
Superintendent Jails & Judicial,
For: Financial Commissioner & Principal Secy. to Govt. Haryana, Admn. of Justice Deptt.

DIRECTORATE OF PROSECUTION, HARYANA

Endst.No.A/3/134-AP(1)-06/7543 Dated:11.5.06

A copy is forwarded to Sh.Om Parkash, Ex.District Attorney, Member, Haryana Public Service Commission, Haryana, Chandigarh with reference to his representation dated 1.6.2005.

Sd/-
For: Director of Prosecution
Haryana 9-5-06"

Learned counsel for the petitioner has placed reliance on **Mehar Singh** Vs. **State of Punjab** 2003(2) RSJ 344 wherein this Court in para 7 of the judgment held that since the petitioner resigned after he had put in more than 10 years of service, he is entitled to pension and other

retiral benefits as premature retirement from service and voluntary resignation from service will have the same effect i.e. one is retiring.

Learned counsel further referred to the judgment passed in **Haryana State** Vs. **Madan Pal Ahlawat** reported in 2003(1) RSJ 490 wherein his Lordship Hon'ble Mr. Justice SS Nijjar while dealing with considered Rule 4.19(a) and 6.16(2) observed that Rule 4.19(a) of Punjab Civil Services Rules Vol.II Part II would apply only in cases where a resignation is submitted by a government servant to avoid an order of dismissal or removal from service either under proviso C to Article 311(2) for anti-national activities as sabotage, espionage etc. for misconduct. This provision cannot possibly be made applicable to a voluntary resignation from service for domestic reasons. Even in case of resignation, the case would clearly fall under Rule 6.16(2) of the Rules. Since the respondent resigned from service due to domestic reasons having put in more than 10 years of service, he was clearly entitled to proportionate pension as provided under Rule 6.16(2).

After considering the observations made in **Mehar Singh (supra)** and **Haryana State Vs. Madan Pal Ahlawat (supra)**, we are of the view that the petitioner, who has resigned from the post of District Attorney is entitled to the proportionate pension with respect to the services he has served i.e. 13 years 6 months and 25 days. as is applicable to the State of Haryana. He is thus entitled to the benefits as per provisions 6.16(2) of the Punjab Civil Services, Volume-II (as applicable to State of Haryana).

We, therefore, allow the present writ petition and quash Annexure P8. The retiral benefits i.e. Pension, gratuity and leave

encashment etc. be made payable to the petitioner within four months from the date of passing of this order.

(R S MADAN)
JUDGE

(ASHUTOSH MOHUNTA)
JUDGE

January 29, 2007
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